# UNITED STATES OF AMERICA DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT OFFICE OF ADMINISTRATIVE LAW JUDGES

The Secretary, United States	)	
Department of Housing and Urban	)	
Development, on behalf of	)	
Archie O. Johnson,	)	
Charging Party,	)	FHEO No: 05-04-1251-8
v.	)	
Olage W. Boyd,	)	
Respondent.	)	
	)	

#### CHARGE OF DISCRIMINATION

# I. JURISDICTION

On or about August 24, 2004, Archie O. Johnson, an aggrieved person, filed a complaint with the United States Department of Housing and Urban Development (hereafter "HUD") alleging that Olage W. Boyd, and Thomas and Joyce Dueppen violated the Fair Housing Act as amended in 1988, 42 U.S.C. Section 3601 *et seq.* (hereafter the "Act"), by discriminating on the basis of disability, in violation of 42 U.S.C. §3604 (c) and (f). Complainant Archie Johnson subsequently amended his complaint to remove Thomas and Joyce Dueppen as Respondents.

The Act authorizes the issuance of a charge of discrimination ("Charge") on behalf of an aggrieved person following an investigation and a determination that reasonable cause exists to believe that a discriminatory housing practice has occurred. 42 U.S.C. §3610(g)(1) and (2). The Secretary has delegated to the General Counsel (54 Fed. Reg.13121), who has redelegated to the Regional Counsel (67 Fed. Reg. 44234), the authority to issue such a charge, following a determination of reasonable cause by the Assistant Secretary for Fair Housing and Equal Opportunity or his or her designee.

The Director of the Office of Fair Housing and Equal Opportunity for Region V, on behalf of the Assistant Secretary for Fair Housing and Equal Opportunity, has determined that reasonable cause exists to believe that a discriminatory housing practice has occurred in this case based on disability, and has authorized and directed the issuance of this Charge of Discrimination.

### II. SUMMARY OF ALLEGATIONS IN SUPPORT OF THIS CHARGE

Based on HUD's investigation of the allegations contained in the aforementioned complaint and Determination of Reasonable Cause, Respondent Olage W. Boyd (hereafter "Respondent Boyd") is charged with discrimination against Complainant Archie Johnson (hereafter "Complainant Johnson"), an aggrieved person as defined by 42 U.S.C. §3602(i), on the basis of disability in violation of 42 U.S.C. §3604(c) and (f) as follows:

- 1. It is unlawful to make, print, or publish, or cause to be made printed or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on disability or an intention to make any such preference, limitation or discrimination. 42 U.S.C. §3604(c); see also; 24 C.F.R. §100.75(a); 24 C.F.R. §100.75(b); 24 C.F.R. §\$100.75(c)(1) and (2).
- 2. It is unlawful to discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a disability of that buyer or renter. 42 U.S.C. §3604(f)(1)(A) see also; 24 C.F.R.§100.202(a)(1).
- 3. Complainant Johnson is a disabled person as defined by 42 U.S.C. §3602(h). He is HIV positive and receives Social Security Disability benefits.
- 4. At all times relevant to this Charge, Respondent Boyd, owned and operated the building located at 3024 W. Juneau in Milwaukee, Wisconsin, (hereafter "subject property") which consists of 4 units, 2 two-bedroom units and 2 one-bedroom units. Complainant sought to rent an available unit at the subject property.
- 5. On information and belief, Respondent Boyd also owns a 4 unit dwelling located at 1539 N. 32<sup>nd</sup> Street; a 4 unit dwelling on 3018 W. Juneau Street and the duplex in which he lives.
- 6. In or around June of 2004, Complainant Johnson was visiting with a friend who was, at that time, a tenant of Respondent Boyd. She shared with Complainant Johnson that Respondent Boyd had apartment vacancies and that Respondent Boyd welcomed tenants with government sources of income. However, she mentioned that the buildings needed work. This appealed to Complainant Johnson because his source of income is Social Security Disability benefits. Complainant's friend gave him Respondent Boyd's phone number.

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<sup>&</sup>lt;sup>1</sup> Respondent purchased the subject property on a land contract. Though Respondent Boyd and Thomas and Joyce Dueppen all agree that Respondent Boyd owns the property outright, it is unclear whether the Duppens maintain some ownership interest under the terms of the land contract should Respondent Boyd default on the contract.

- 7. On or around June 13, 2004, Complainant Johnson left a voice mail message for Respondent Boyd. In his message, he stated that he was interested in renting an apartment and offered that he would be willing to do repair work.
- 8. On or around June 13, 2004, Respondent Boyd returned Complainant Johnson's phone call. At first, Respondent Boyd seemed quite interested in Complainant Johnson's rental inquiry. Respondent Boyd asked Complainant his source of income, to which Complainant Johnson replied that he received Social Security Disability benefits. Respondent Boyd then asked the nature of Complainant's disability, to which Complainant Johnson replied that he was "HIV positive."
- 9. Upon learning of Complainant's disability, Respondent Boyd said he was "sorry" and informed Complainant Johnson that he could not rent to him. Complainant Johnson asked "why not?" Respondent Boyd replied that he had once had a tenant who died of AIDS and it had cost thousands of dollars to clean the unit. In an effort to persuade Boyd to change his mind, Complainant Johnson told Respondent Boyd that he wasn't so unhealthy that he was going to die and offered that he could even do some work on the property. Respondent Boyd declined, stating "I just can't rent to you people" and that if he did rent to Complainant, he would have to tell the other tenants that Complainant had "AIDS."
- 10. After the conversation with Respondent Boyd, Complainant Johnson hung up the phone and cried. He was looking forward to living independently and now felt this was not a possibility. His friend and roommate at the time, James Randall, comforted him and advised him to take action. Complainant visited Kelly Grady, his caseworker at AIDS Resource of Wisconsin, who referred him to the Metropolitan Milwaukee Fair Housing Center ("MMFHC").
- 11. On or around June 15, 2004, Complainant Johnson complained of Respondent Boyd's discriminatory actions to MMFHC. In response, on or around June 17, 2004, MMFHC assigned a fair housing tester to test Respondent Boyd's rental practices. The tester was to pose as a woman calling on available rental properties in search of an apartment for her brother, who was disabled with AIDS.
- 12. On or around June 17, 2004, the MMFHC tester called (414) 933-3734. A man who latter affirmatively identified himself as "Mr. Boyd" answered the phone. The tester inquired about the availability of a one-bedroom unit. Respondent Boyd told her that he had a one-bedroom unit at 3024 W. Juneau. The tester volunteered that she was looking for a unit for her "brother." Respondent Boyd asked a number of standard rental questions, and then asked if the tester's brother worked. The tester replied negatively and then added that her brother received Social Security Disability. Respondent Boyd asked how her brother was disabled. When the tester responded that her brother had AIDS, Respondent said that was going to be "difficult." He mentioned that someone else with AIDS had recently called and then proceeded to tell her about a tenant who had died in a unit and that it had cost him thousands of dollars to clean up the unit. Respondent Boyd added

- that, "it's not discrimination," but rather about "the money." He said he couldn't "afford that." They exchanged names and thanks and said goodbye.
- 13. On or about July 20, 2004, MMFHC filed a fair housing complaint with the Wisconsin Equal Rights Division on behalf of Complainant Johnson, alleging discrimination by Respondent Boyd. On or about August 24, 2004, Complainant Johnson also filed his fair housing complaint with HUD, alleging discrimination by Respondent Boyd.
- 14. On September 10, 2004, the Wisconsin Equal Rights Division issued a Charge and Initial Determination of Probable Cause against Respondent Boyd. The Charge and determination issued by the Wisconsin Equal Rights Division states that during an interview with a Wisconsin Equal Rights Division investigator, Respondent Boyd admitted that he spoke with Complainant Johnson; that Complainant Johnson sought to rent an apartment from him; that Complainant Johnson had disclosed his HIV status to him; that he told Complainant Johnson that he had once had a tenant with AIDS die in one of his rental units and that it had cost him a lot of money to have the apartment cleaned; and that he told Complainant that he could not take the risk of renting to him. The Charge states that these admissions by Respondent Boyd formed the basis of the Wisconsin Equal Rights Division's Charge and Determination of Probable Cause.
- 15. Complainant Johnson opted not to participate in the Wisconsin Equal Rights Division hearing in favor of proceeding with his fair housing complaint at HUD.<sup>2</sup>
- 16. Respondent Boyd subsequently rented the subject unit to a non-disabled tenant.

#### III. DAMAGES

- 17. As a result of Respondent Boyd's discriminatory conduct, Complainant Johnson felt ashamed and "dirty." He was so embarrassed by Respondent Boyd's refusal to rent to him that he did not even want to tell his roommate and friend what Respondent Boyd had said to him. Complainant Johnson had sought to rent an apartment for himself as an expression of independence and to prove to himself that he could support himself. However, after his experience with Respondent Boyd, Complainant abandoned his search for independent housing and continued to live with a roommate for over a year. Complainant Johnson also quit his volunteer position at a local food pantry, for fear that people there and people in the neighborhood would learn of his HIV status and reject him. He felt utterly defeated and didn't want to leave the house.
- 18. On or about July 1, 2005, Complainant finally entered into a lease for his own apartment, where he is the only leaseholder. His rent is now \$610 per month, \$135 more per month than the subject property.

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<sup>&</sup>lt;sup>2</sup> The Wisconsin Equal Rights Division is not a substantially equivalent agency.

- 19. Therefore, as a result of Respondent's discriminatory conduct, Complainant Johnson has suffered damages in the form of emotional distress, economic loss, and inconvenience.
- 20. By refusing to rent, or otherwise making unavailable or denying a dwelling to Complainant Johnson because of his disability, Respondent violated 42 U.S.C. §3604(f)(1)(A).
- 21. By stating to Complainant Johnson, MMFHC and the Wisconsin Equal Rights Division investigator that he would not rent an apartment to Complainant Johnson because he has AIDS and because a former tenant with AIDS had died in a unit in a building managed by him, costing him thousands of dollars to clean up the unit, and by stating that he would have to tell other tenants that Complainant Johnson has AIDS, and by stating that he could not afford the risk of renting to Complainant Johnson, Respondent Boyd committed unlawful discrimination by making statements to Complainant and others that indicated discrimination based on disability, in violation of 42 U.S.C. §3604(c).

## IV. CONCLUSION

WHEREFORE, the Secretary of the U.S. Department of Housing and Urban Development, through the Regional Counsel for Region V, and pursuant to 42 U.S.C. §3610(g)(2)(A) of the Act, hereby charges the Respondent with engaging in discriminatory housing practices in violation of 42 U.S.C. §3604(c) and (f)(1)(A) of the Act, and prays that an order be issued that:

- 1. Declares that the discriminatory housing practices of Respondent as set forth above violate the Fair Housing Act, as amended, 42 U.S.C. §3601 *et seq.*;
- 2. Enjoins Respondent, his agents, employees, and successors, and all other persons in active concert or participation with any of them from discriminating because of disability against any person in any aspect of the purchase of or rental of a dwelling;
- 3. Compels Respondent to participate in fair housing training;
- 4. Awards such damages as will fully compensate Complainant Johnson, an aggrieved person, for his actual and emotional distress damages caused by the Respondent's discriminatory conduct pursuant to 42 U.S.C. §3612(g)(3); and
- 5. Awards civil penalties against Respondent for each violation of the Act committed pursuant to 42 U.S.C. §3612(g)(3).

The Secretary of HUD further prays for additional relief as may be appropriate pursuant to 42 U.S.C. §3612(g)(3).

Respectfully submitted,

Courtney B. Minor

Regional Counsel, Region V

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Date: SEPTEMBER 9, 2005